

No 285

(3)

JUL 25 1944

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT of the UNITED STATES

RICHARD HARRY LAYTON,
Petitioner

vs.

STATE OF OREGON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

In the cause of State of Oregon, Respondent, vs.
Richard Harry Layton, Appellant.

Appealed to the Supreme Court of Oregon from
judgment of the Circuit Court of the State of Oregon,
for Polk County.

Roy R. Hewitt and Harry G. Hoy, of the Oregon
Bar, attorneys for Appellant.

Bruce Spaulding and R. S. Kreason, of the Oregon
Bar, attorneys for Respondent.

Richard Harry Layton, in propria personia.

THE GREAT COURT OF THE UNITED STATES

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PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT of the UNITED STATES

RICHARD HARRY LAYTON,
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STATE OF OREGON,
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

To the Honorable Harlan Fiske Stone, Chief Justice
of the United States of America and to the Honorable
The Associate Justices of the Supreme Court of the
United States:

The Petition of Richard Harry Layton, in propria
personia, for a Writ of Certiorari to be directed to the
Supreme Court of the State of Oregon, to review a
judgment of that Court, entered on the 25th day of
April, 1944, rehearing denied on 16th day of May, 1944,
in favor of Respondent and confirming a conviction of
murder in the first degree against Petitioner, respect-
fully shows:

1. Petitioner was convicted in the Circuit Court of
Polk County, Oregon, of the crime of murder in the
first degree, which conviction requires and Petitioner
has received the sentence of death.

2. The Supreme Court of the State of Oregon has confirmed said conviction and sentence, as appears more fully from the opinion set forth in the transcript of the record herein. The same being State vs. Layton, Oregon Advance Sheet, No. 15, 645, Published April 25th, 1944.

3. The Supreme Court of the State of Oregon is the highest Court of Law in the State of Oregon.

4. The following is a summary of the matter involved:

a. Petitioner's said conviction was based solely and alone on a confession herein designated "State's Exhibit 16", introduced and received in evidence at the trial of Petitioner, which had been extorted from him by State Law enforcement officers, in violation of the Sixth and Fourteenth Amendments to the Constitution of the United States.

5. Said confession was secured, as follows:

a. Without warrant Petitioner was placed in restraint by a State Police Officer, about 1:10 p. m., July 7th, 1943, at Hillsboro, Oregon.

b. He was not accused or informed of the charge made against him.

c. He was not advised of his right to counsel, nor given opportunity to procure counsel or contact friends.

d. He was taken, not before the Magistrate at

Dallas, Polk County, Oregon, but to State Police Headquarters in the vicinity of Portland, Oregon.

e. There he was seated in a straight backed chair where he was kept constantly, save and except for necessary elimination, without opportunity to recline for sleep, until the Police officers had secured a confession, "State's Exhibit 16", that in their opinion would secure a conviction.

f. The elapsed time from the time Petitioner was taken into custody until the officers had secured their desired confession being from 1:10 P. M., on the 7th of July, until 11:30 of the morning of the following day, during which time he was grilled for 9 hours and 50 minutes by from three to five armed officers, there being as many as seven officers in the room at the same time.

g. One among them removed his coat and made threatening gestures towards Petitioner.

h. He was informed that if he did not answer as he was told he would be sent to the gas chamber and he was told in gruesome detail how the gas chamber was operated.

i. He became so sleepy and exhausted that he did not know or realize what he was saying or doing.

j. Petitioner was taken before the Grand Jury in the forenoon on July 9th, 1943.

k. He was advised that he did not need counsel,

though it was known to the officers that his mother had secured counsel for him.

1. He was not allowed to see his counsel until he was arraigned, approaching noon on the 9th day of July, 1943.

6. Petitioner is below normal in mentality and was suffering from a toothache during the entire period from June 7th to 9th, 1943, inclusive.

7. Petitioner was indicted on the 9th day of July, 1943, by the Grand Jury of Polk County, with the crime of murder in the First Degree, for the killing of Ruth Hildebrand by forcing her into the Willamete River, where she drowned, while attempting to forcibly ravish her.

8. To which Petitioner entered a plea of not guilty and gave notice of his purpose to show in evidence that he was mentally defective, under the provisions of Section 26-846 O. C. L. A., 1940.

9. Over the objection of Petitioner the trial court permitted the State of Oregon to introduce in evidence said, "State's Exhibit 16."

10. The said confession was without the corroboration as required by Section 26-937, O. C. L. A., in violation of the Fourteenth Amendment to the Constitution of the United States.

a. Section 26-937, O. C. L. A., provides:

"A confession of a defendant, whether in the

course of judicial proceedings or to a private person, can not be given in evidence against him, when made under the influence of fear produced by threats; nor is a confession only sufficient to warrant his conviction, without some other proof that the crime has been committed."

11. The reasons relied on for the allowance of the Writ, are:

a. The Supreme Court of the State of Oregon has rendered said decision against Petitioner based upon evidence secured by force, intimidation, without corroboration, and taking advantage of Petitioner's low grade mentality, by forcing him to give evidence against himself, at a time when he was not informed of the charge made against him, had not been taken and was not before the Magistrate and was deprived of the assistance of counsel for his defense; said decision has and will deny to Petitioner equal protection of the Law and deprive him of his liberty and life by denying to him due process of law; all in violation of Amendments VI and XIV to the Constitution of the United States, and the safeguards of the Common Law and the Judicial procedure of enlightened and civilized people, as enunciated in:

McNab vs. U. S. 318 U. S. 332, 1943.

E. E. Ashcraft and John Ware vs. State of Tennessee, Decided May 1st, 1944, Supreme Court Reporter, Vol. 64, Advanced Sheet 13, published May 15, 1944, Page 921.

12. Your Petitioner presents to this Court, and files herewith as an Exhibit hereto, a duly certified transcript of such part of the record in the Supreme Court of the State of Oregon as pertains to the points and issues herein raised.

WHEREFORE, your Petitioner, in propria personia, respectfully prays that a Writ of Certiorari may be issued out of and under the Seal of this Court to the Supreme Court of the State of Oregon, to the end that the decision and Judgement of the Supreme Court of the State of Oregon may be reviewed by this Honorable Court.

RICHARD HARRY LAYTON,

Petitioner in propria personia.

HARRY G. HOY

ROY R. HEWITT,

Of the Oregon Bar, Attorneys for Petitioner.